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## **Agricultural Marketing Service**

### **7 CFR Part 800**

**[Doc. No. AMS-FGIS-24-0010]**

**RIN 0581-AE28**

## **Fees for Official Inspection and Weighing Services under the United States Grain Standards Act**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS), Federal Grain Inspection Service (FGIS or Service) published an interim rule in the *Federal Register* on June 6, 2024, establishing revised fees for official services performed by FGIS and requesting comments. The revised fees announced in the interim rule became effective on July 8, 2024, and will remain in effect until new fees are established. This final rule adopts the fees established by the interim rule without change and responds to public comments submitted in response to the interim rule.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:** This final rule adopts, without change, revised fees for official services performed by FGIS, as well as the regulatory changes needed to implement those fees, as described in an interim rule (“Fees for Official Inspection and Weighing Services under the United States Grain Standards Act”) published in the

*Federal Register* on June 6, 2024 (89 FR 48257). The revised fees became effective on July 8, 2024, and will remain in effect until new fees are established.

The revised fees were calculated using standardized formulas modeled after those used in other AMS user-fee funded grading programs. A forthcoming final rule (“Formulas for Calculating Hourly and Unit Fees for FGIS Services”) to be published separately in the *Federal Register* will amend FGIS’s user fee regulations. Prospective customers can find FGIS’s fee schedules posted on AMS’s public website at:

<https://www.ams.usda.gov/about-ams/fgis-program-directives>.

The United States Grain Standards Act (USGSA) authorizes and requires the Secretary of Agriculture to charge and collect reasonable fees to cover the estimated costs for performing official grain inspection and weighing services (which are mandatory under the Act for U.S. grain exports). In 2015, Congress amended the USGSA to provide that “[i]n order to maintain an operating reserve of not less than 3 and not more than 6 months, the Secretary shall adjust the fees ... not less frequently than annually.” (7 U.S.C. 79(j)(4) and 79a(1)(3)). To comply with these provisions, FGIS, then the Grain Inspection, Packers, and Stockyards Administration (GIPSA), issued regulations requiring the agency to review and adjust fees annually in order to maintain a 3- to 6-month reserve of operating expenses. (81 FR 49855). AMS published the 2024 interim rule to address FGIS’s immediate financial needs, ensure the agency’s continued provision of mandatory official services, and prevent disruption to the grain industry.

### **Comment Review**

AMS published the interim rule in the *Federal Register* on June 6, 2024 (89 FR 48257). The interim rule became effective on July 8, 2024. Copies of the interim rule were sent via email to FGIS stakeholders. The interim rule was also made available through the internet by AMS via <https://www.regulations.gov>. AMS provided a 30-day

comment period, ending July 8, 2024, to give interested persons an opportunity to comment on the interim rule.

FGIS received two comments to the interim rule. One of the comments was irrelevant to the subject of the rule and was not considered with respect to this rulemaking action. The other comment was jointly submitted by two trade organizations. One of the trade organizations represents grain, feed, processing, exporting, and other grain handling companies who collectively operate over 8,000 facilities. The other trade association represents private and publicly owned companies and farmer-owned cooperatives that are involved in, and provide services to, the agri-bulk products international trading industry.

The trade associations' comment generally supported the interim rule; however, the comment expressed concern with the fee changes "and the potential impact of promoting the marketing of high-quality grain to both domestic and foreign buyers based on the agency's current financial status." The comment also expressed concern about the shifting marketplace, with potentially reduced exports, noting the likelihood of reduced exports in the upcoming 12- to 18-months, and the importance of FGIS taking all measures to control costs. The comment noted that significant fee increases are unsustainable, but also articulated the importance of FGIS, and the accurate, timely, cost-effective delivery of official grain inspection and weighing services. As a strategy to improve the current method for calculating fees, the comment suggested that FGIS decouple the other Schedule A user fees from the five-year rolling average for tonnage fees to make the fees more in line with the market rates.

FGIS agrees with the commenters. FGIS took steps to mitigate a larger increase in the fees through stakeholder interactions prior to publishing the interim rule, and published a more moderate fee increase that would spread the rebuild of the three- to six-month operating reserve over the duration of three years. This step allowed 2024 fees to

be substantially lower than they would have been if FGIS attempted to rebuild the reserve more quickly. FGIS is actively taking steps to reduce costs and respond to the evolving export market. FGIS detailed over 10 percent of its staff, froze hiring and awards, reduced overtime, and stopped travel unless mission critical. These steps, coupled with the revised fees, have set FGIS on a path for continued, uninterrupted operations. FGIS is partnering with industry stakeholders to review ways to continue to reduce costs through the use of inspection automation technology.

Based on the comments received, the critical requirement for mandatory FGIS inspection and weighing services, and the immediate need for the revised fees published in the interim rule, FGIS has determined that finalizing the interim rule, as published in the Federal Register on June 6, 2024 (89 FR 48257) is consistent with and will tend to effectuate the purposes of the Act. Accordingly, FGIS has made no changes to the fees published in the interim rule and concludes the action through this final rule.

**Revised Fees**

Tables 2 through 4, below, set forth the revised fees for FGIS inspection and weighing services effective July 8, 2024, as described in the interim rule published on June 6, 2024 (89 FR 48257). The revised fees will remain in effect until new fees are established. The revised fees were calculated using standardized formulas modeled after those used in other AMS user-fee funded grading programs. A forthcoming final rule to be published separately in the Federal Register will amend FGIS’s user fee regulations to incorporate the formulas.

**Table 1 – Fees for Official Services Performed at an Applicant’s Facility in an Onsite FGIS Laboratory<sup>1</sup>**

<b>Inspection and Weighing Services Hourly Fees (per service representative):</b>				
<b>Service</b>	<b>Regular Rate Monday-Friday (6 a.m. – 6 p.m.)</b>	<b>Night differential Monday – Friday (6 p.m. – 6 a.m.)</b>	<b>Overtime Rate Sunday and Saturday</b>	<b>Holiday Rate</b>

One-Year Contract (per hour per Service representative):	\$65.00	\$71.50	\$81.30	\$97.50
Noncontract (per hour per Service representative):	\$93.30		\$116.60	\$140.00
<b>Additional Tests (cost per test, assessed in addition to the hourly rate):<sup>2</sup></b>				
<b>Service</b>				<b>2024 Rate</b>
Aflatoxin (rapid test kit method)				\$17.90
All other Mycotoxins (rapid test kit method)				\$32.60
NIR or NMR Analysis (protein, oil, starch, etc.)				\$4.30
Waxy corn (per test)				\$4.30
Class Y Weighing - online (per carrier)				\$2.80
Fees for other tests not listed above will be based on the noncontract hourly rate from Fee Table 1 (per hour / per representative)				
Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier):				
<b>All outbound carriers serviced by the specific field office (per-metric ton):<sup>3</sup></b>				
<b>Service</b>				<b>2024 Rate</b>
Delegated States/Designated Agencies (national \$0.057) <sup>4</sup>				\$0.057
League City tonnage fee (local \$0.080 plus national \$0.057)				\$0.137
New Orleans tonnage fee (local \$0.012 plus national \$0.057)				\$0.069
Pacific Northwest tonnage fee (local \$0.135 plus national \$0.057)				\$0.192
Toledo tonnage fee (local \$0.154 plus national \$0.057)				\$0.211

<sup>1</sup> Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup> Appeal and re-inspection services will be assessed the same fee as the original inspection service.

<sup>3</sup> Standard carrier capacity for trucks/submitted samples – 52,800 lbs. (approx. 23.95 metric tons (mt)), container – 54,000 lbs. (approx. 24.49 mt), rail – 220,000 lbs. (approx. 99.79 mt), barge – 3,648,000 lbs. (approx. 1,654.70 mt), Pacific Northwest (PN) barge – 6,707,000 lbs. (approx. 3,042.24 mt).

<sup>4</sup> Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

**Table 2 - Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory<sup>1,2</sup>**

<b>Original Inspection and Weighing (Class X) Services:</b>	
Sampling only (use hourly rates from Fee Table 1)	
<b>Stationary Lots (sampling, grade/factor, and checkloading):</b>	
<b>Service</b>	<b>2024 Rate</b>
Truck/trailer/container (per carrier)	\$35.00
Railcar (per carrier)	\$51.90

Sacked grain (per hour per service representative plus an administrative fee per hundred weight)	\$0.125/CWT
<b>Lots sampled online during loading (sampling use hourly rates from Fee Table 1, plus):</b>	
<b>Service</b>	<b>2024 Rate</b>
Truck/trailer/container (per carrier)	\$21.30
Railcar (per carrier)	\$43.90
Sacked grain (per hour per service representative plus an administrative fee per hundred weight)	\$0.125/CWT
<b>Other services:</b>	
<b>Service</b>	<b>2024 Rate</b>
Submitted sample (per sample - grade and factor)	\$21.30
Factor only (per factor - maximum 2 factors)	\$10.40
Class X Weighing will be based on the noncontract hourly rate from Fee Table 1 (per hour / per service representative)	
<b>Additional tests (excludes sampling):</b>	
<b>Service</b>	<b>2024 Rate</b>
Aflatoxin (rapid test kit method)	\$52.50
All other Mycotoxins (rapid test kit method)	\$67.60
Fecal Matter Assay - Detection of Fecal Matter (Qualitative)	\$326.55
NIR or NMR Analysis (protein, oil, starch, etc.)	\$17.90
Test Kit Evaluation (Monday-Friday)	\$111.70
Tilletia controversa Kühn (TCK) spores testing (per sample)	\$326.55
Waxy Corn (per test)	\$17.90
Fees for other tests not listed above will be based on the noncontract hourly rate from Fee Table 1	
<b>Pesticide Residue Testing:</b>	
<b>Service</b>	<b>2024 Rate</b>
Routine Compounds (per hour per service representative)	\$376.50
Non-routine Compounds (Subject to availability) (per hour per service representative)	\$200.90
<b>Original Inspection and Weighing (Class X) Services:</b>	
<b>Appeal inspection and review of weighing service<sup>3</sup></b>	
<b>Sampling service for Appeals additional (hourly rates from Fee Table 1)</b>	
<b>Service</b>	<b>2024 Rate</b>
Board appeal and Appeals (grade and factor)	\$142.70
Factor only (per factor - max 2 factors) <sup>4</sup>	\$75.10
<b>Additional tests (assessed in addition to all other applicable tests):</b>	
<b>Service</b>	<b>2024 Rate</b>
Aflatoxin (rapid test kit method)	\$52.50
All other Mycotoxins (rapid test kit method)	\$82.20
Mycotoxin (per test - HPLC)	\$245.60
NIR or NMR Analysis (protein, oil, starch, etc.)	\$31.10
Sunflower oil (per test)	\$31.10

Fees for other tests not listed above will be based on the noncontract hourly rate from Fee Table 1	
<b>Stowage examination (service on request):</b>	
<b>Service</b>	<b>2024 Rate</b>
Ship (per stowage space)(minimum 5 spaces per ship)	\$89.00
Subsequent ship examinations(same as original) (minimum 3 spaces per ship)	\$89.00
Barge (per examination)	\$71.30
All other carriers (per examination)	\$28.20

<sup>1</sup> Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee’s assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup> In addition to a 2-hour minimum charge on Saturday, Sunday, and holidays, an additional charge will be assessed when the revenue from the services in Fee Table 2, does not equal or exceed what would have been collected at the applicable hourly rate.

<sup>3</sup> If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of \$3.50 per sample by the Service. (Invoice processed through appropriate payment method.)

<sup>4</sup> Factor only appeal – In accordance with 800.135(b) Kind and Scope, an appeal inspection is limited to the kind and scope of the original or re-inspection service; in the case of factor-only inspections, the service is limited to a maximum of two factors with no grade assignment.

**Table 3 – Miscellaneous Services**

<b>Service</b>	<b>2024 Rate</b>
Grain grading seminars (per hour per service representative) <sup>1</sup>	\$111.70
Samples provided to interested parties (per sample)	\$5.20
Extra copies of certificates and divided lots (per certificate)	\$3.50
Special mailing (actual cost)	Actual cost
Travel (mileage, airfare, per diem, etc.)	Actual cost
Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 2.)	
<b>Special Weighing Services (per hour per service representative)<sup>10</sup></b>	
<b>Service</b>	<b>2024 Rate</b>
Scale testing and certification	\$145.20
Evaluation of weighing and material handling systems	\$145.20
NTEP prototype evaluation (other than Railroad Track Scales)	\$145.20
NTEP prototype evaluation of Railroad Track Scales	\$145.20
Use of FGIS railroad track scale test equipment per facility for each requested service	\$870.70
Mass standards calibration and re-verification	\$145.20
Special [weighing] projects	\$145.20

<sup>1</sup> Regular business hours-Monday through Friday-service provided at other than regular business hours will be charged at 1½ times the applicable hourly rate (see § 800.0(b)(14) for definition of “business day.”)

## **Regulatory Changes**

The interim rule added a new section (§ 800.74) to the regulations to implement the revised fees set forth above. In addition, because the current user fee regulation at 7 CFR 800.71 does not permit fee increases greater than 5 percent, the interim rule imposed a temporary stay on § 800.71. The interim rule also placed a temporary stay on § 800.72(b), as the additional charge provided therein was incorporated into Fee Table 2, footnote 2, above. To accommodate the stay imposed on §§ 800.71 and 800.72(b), and the addition of § 800.74, the interim rule also made conforming changes where § 800.71 or § 800.72 were otherwise referenced in 7 CFR part 800, including in the following sections: §§ 800.34, 800.36, 800.73, 800.156(d)(5), and 800.197(b).

### **Required Regulatory Analyses**

#### ***Executive Orders 12866, 13563, and 14094***

This rule is being issued in conformance with Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 14094, “Modernizing Regulatory Review.” Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means.

OMB has designated this rule as not significant under Executive Orders 12866, 13563, and 14094. Accordingly, OMB has not reviewed this rule under those orders. Since grain export volume can vary significantly from year to year, estimating the impact

of future fee changes can be difficult. FGIS recognizes the need to provide predictability to the industry for inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 to 6 months of operating expenses ensures that FGIS can adequately cover its costs without imposing an undue burden on its customers.

FGIS regularly reviews its user-fee financed programs to determine whether the fees charged for performing official inspection and weighing services adequately cover the costs of providing those services. Due to limitations in the current regulations (7 CFR 800.71(b)(3)), which permit fee increases of no more than 5 percent per year, combined with four years of rate decreases, and noneconomic factors that led to the 2020-2023 period having highest inflation in more than 40 years,<sup>1</sup> FGIS faced an operating deficit that was forecasted to grow without corrective action.

This rule revises the fees for official grain inspection and weighing services provided by FGIS to ensure the stability of the program. In conjunction with AMS's forthcoming final rule ("Formulas for Calculating Hourly and Unit Fees for FGIS Services") amending FGIS's user fee regulations, this rule will also ensure that FGIS complies with the USGSA, which requires the agency to charge fees sufficient to cover its costs and maintain a 3- to 6-month operating reserve. FGIS will continue to seek out cost-saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rule is unlikely to have an annual effect of \$200 million or more or adversely affect the economy. FGIS has operated at a net loss for five consecutive years, and even with the maximum fee increases permitted under the current regulations, the agency has been unable to reduce the deficits and rebuild the operating reserve. While this rule addresses the agency's current deficit, the forthcoming final rule seeks to prevent

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<sup>1</sup> For example, the Consumer Price Index (CPI) Calculator (<https://data.bls.gov/cgi-bin/cpicalc.pl>) shows prices up 20 percent between January 2020 and February 2024, and up 31 percent between January 2016 and February 2024.

additional deficits in future years by revising FGIS's user fee regulations to enable more accurate calculation of the agency's costs and greater flexibility in future rate changes.

### ***Regulatory Flexibility Analysis***

Under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-12), FGIS has considered the economic impact of this final rule on small entities. Accordingly, FGIS has prepared this regulatory flexibility analysis. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions. This ensures that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This final rule will affect customers of FGIS's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114). Current guidance from the SBA provides a revenue cutoff at \$34 million to differentiate large and small firms in this industry. Fees for the program which apply to this industry are provided on the FGIS website.

Under the USGSA, all grain exported from the United States must be officially inspected and weighed, with few exceptions. FGIS provides mandatory inspection and weighing services at 29 export facilities in the United States. Five delegated State agencies provide mandatory inspection and weighing services at 20 facilities. All of these facilities are owned by multinational corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA.

The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. The regulations found at 7 CFR 800.30 and 800.31 define a foreign commerce grain business as the business of regularly buying, handling, weighing, or transporting grain for sale in foreign commerce

totaling 15,000 metric tons or more during the preceding or current calendar year.

Currently, there are 174 businesses registered to export grain, most of which are not small businesses.

Although most exporters are not small businesses, most users of FGIS’s official inspection and weighing services (which include domestic grain businesses as well as exporters) meet the SBA requirements for small entities. Data on user fee receipts from FGIS for the past 5 years, plus 2024 through February, show a total of 2,123 different accounts over this time, though many firms are represented by multiple accounts. For the purpose of this regulatory flexibility analysis, FGIS will consider accounts as representing establishments, with multiple establishments associated with larger firms.

FGIS identified a total of 31 large firms, as defined by the SBA firm size classification of receipts in excess of \$34 million. FGIS also identified the total number of establishments affiliated with the 31 large firms to be 133. With a total number of establishments of 2,123, this means 1,990, or 94 percent, of the establishments that paid fees to FGIS over the 2019-2024 period are small businesses according to the SBA definition.

Table 4 shows that, while only 6 percent of the firms are considered large, in total they have contributed the vast majority of the fees paid to the program. In each of the five previous years, and for the year 2024 to date, the 31 large firms paid between 86 and 90 percent of all FGIS fees, with an average of 89 percent. The remaining 1,990 establishments paid on average 11 percent of total fees.

**Table 4 - FGIS Billed Accounts Summary Table for Regulatory Flexibility Analysis by Small Business Administration Size Classification**

Fiscal Year	All Firms	Large Firms		Small Firms	
	Total Fees Paid	Total Fees Paid	Share Paid	Total Fees Paid	Share Paid
2019	\$32,314,848	\$27,694,899	86%	\$4,619,949	14%
2020	\$30,746,015	\$27,386,467	89%	\$3,359,547	11%
2021	\$34,320,110	\$30,693,195	89%	\$3,626,915	11%
2022	\$31,663,547	\$28,183,027	89%	\$3,480,520	11%

2023	\$27,734,760	\$25,069,234	90%	\$2,665,526	10%
Oct 2023- Feb 2024	\$10,702,712	\$9,679,943	90%	\$1,022,769	10%
Grand Total	\$167,481,991	\$148,706,765	89%	\$18,775,226	11%

The revised fees implemented by the interim rule and adopted herein do not change the relative burden of fees on small businesses. The provisions of this final rule will apply equally to all entities. The revised fees will benefit all inspection applicants, regardless of size, as the fees more closely reflect the current costs of inspections. Finally, this final rule will not impose additional reporting, record keeping, or other compliance requirements on small entities. FGIS has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

***Executive Order 12988***

This final rule has been reviewed under Executive Order 12988—Civil Justice Reform. It is not intended to have retroactive effect. Section 18 of the USGSA (7 U.S.C. 87g) provides that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

***Executive Order 13175***

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. FGIS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian

Tribes.

### ***Congressional Review Act***

Pursuant to the Congressional Review Act (5 U.S.C. 801-808), the Office of Information and Regulatory Affairs designated this final rule as not a major rule, as defined by 5 U.S.C. 804(2).

### ***E-Government Act***

USDA is committed to complying with the provisions of the E-Government Act (44 U.S.C. 3601-3616) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

### ***Paperwork Reduction Act***

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large FGIS customers. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FGIS reports and forms are periodically reviewed to reduce information collection requirements and duplication.

### **List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Conflict of interests, Exports, Freedom of information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service adopts the interim rule amending 7 CFR part 800 published June 6, 2024, at 89 FR 48257, as final without change.

**Melissa Bailey,**

*Associate Administrator,  
Agricultural Marketing Service.*